

International law scholarship in times of dictatorship and democracy: exemplified by the life and work of Wilhelm Wengler

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Introduction

Detlev Vagts has carried out much research on international law during the Nazi period,¹ including on Wilhelm Wengler and his fate during that time.² In this *Festschrift* in Detlev's honour, a focus on the life and work of Wilhelm Wengler,³ an international law scholar who stood in close contact with the German resistance movement to National Socialism, is particularly appropriate. The academic context in which Wengler was working demonstrates the options open to German international law scholars after 1933. These ranged from genuine enthusiasm for National Socialism, over academic and personal adaptation to the 'new realities' and resort to internal or external emigration to insurgency. Wengler's life

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¹ Cf. D. Vagts, 'International Law in the Third Reich', *AJIL*, 84 (1990), 661–704.

² *Ibid.*, 673.

³ Cf. also F. v. Schlabrendorff, 'Wilhelm Wengler – Wesen und Gestalt', in J. Tittel (ed.), *Multitudo legum – ius unum – Festschrift für Wilhelm Wengler zu seinem 65. Geburtstag* (Berlin: Interrecht, 1973), 1–21; W. Rudolf, 'Wilhelm Wengler zum 70. Geburtstag', *Archiv für Öffentliches Recht*, (1977), 610–12; K. Wähler, 'Wilhelm Wengler zum 75. Geburtstag', *NJW* (1982), 1444; *ibid.*, 'Wilhelm Wengler zum 80. Geburtstag', *NJW* (1987), 2135; F. Sturm, 'Wilhelm Wengler octogenario gratulamur', *JR* (1987), 490–4; E. Jayme, 'Nachruf: Wilhelm Wengler', *JZ* (1995), 1058; C. Kohler, 'Wilhelm Wengler (1907–1995)', *IPrax* 1996, 152–5.

also exemplifies how post-war scholarship in Germany and abroad evaluated the attitude of German scholars before 1945.

Studies, doctoral thesis and scholarly activities at the Kaiser Wilhelm Institute of Comparative and International Private Law and the Kaiser Wilhelm Institute of Comparative Public Law and International Law

Wilhelm Wengler was born on 12 June 1907, to working-class parents in Wiesbaden. After attending secondary school, he studied law and political science at the University of Frankfurt/Main from 1927 until 1931.⁴ In Frankfurt, he also passed his First State Exam with distinction, and also met Hans Lewald, who later became his doctoral supervisor. In 1931 he obtained his doctorate in law *magna cum laude* with a thesis on the primacy of international law,⁵ as well as his doctorate in political science *summa cum laude* with a thesis on double taxation.⁶ Immediately thereafter, he began his practical legal training and simultaneously started working as a research fellow at the University of Frankfurt/Main before moving to the Kaiser Wilhelm Institute of Comparative and International Public Law in Berlin. His first day at work was 1 May 1933, just after the Nazi government seized power (*Machtergreifung*).⁷

Even before his Second State Exam in 1935 Wengler, like all Prussian junior lawyers was obliged to attend, from March to May 1935, a *Gemeinschaftslager* (community camp) in Jüterbog/Brandenburg. This

⁴ For the history of the Faculty of Law of the University of Frankfurt/Main during the Weimar Republic period, cf. N. von Hammerstein, *Die Johann-Wolfgang-Goethe-Universität Frankfurt am Main: von der Stiftungsuniversität zur staatlichen Hochschule, vol 1: 1914–1950* (Neuwied and Frankfurt/Main: Alfred Metzner Verlag, 1989), 140–4.

⁵ W. Wengler, 'Studien zur Lehre vom Primat des Völkerrechts', *Zeitschrift für Völkerrecht* (1936), 322–92.

⁶ W. Wengler, *Beiträge zum Problem der internationalen Doppelbesteuerung. Die Begriffsbildung im internationalen Steuerrecht, Beiträge zum ausländischen und internationalen Steuerrecht*, vol. 11 (Berlin: de Gruyter, 1935). Copies of the certificates are located in Wengler's personnel file in the archive of the Freie Universität Berlin.

⁷ Letter from Kaiser Wilhelm Institute, 28 February 1933, according to which it was foreseen that Wengler would 'assist Prof. Lewald in his research work on international private law at the Institute, especially for summary reports on the development of particular doctrines home and abroad', cf. Wengler's personnel file at the Freie Universität Berlin, XIV.

initiative of the Prussian Minister of Justice, Hanns Kerrl,⁸ was designed to expose young lawyers to paramilitary and ideological training.⁹ Wengler's *Lagerzeugnis* (camp certificate) shows both his unambiguously negative view of the Nazi regime and his frankness. The certificate mentions that his attitude to camp life was 'negative from the very beginning', and that his attitude to the Nazi regime was 'anything but not suspicious'.¹⁰ In addition, the certificate testified that Wilhelm Wengler rejoiced in having failed the sports badge of the *Sturmabteilung* (SA), as he regarded the strengthening of the SA as a 'death sentence for the German Armed Forces'.¹¹ In particular, the certificate attested to Wengler's desire 'to cross the border, to get out of Germany, because here one cannot live and work freely'.¹² Unsurprisingly, he was considered unsuitable for the civil service because of this negative evaluation.¹³ In reaction to these statements, the government prosecution service launched a preliminary investigation against him, alleging a misdemeanour according to para. 2 of the 'Law on Malicious Attacks on State and Party'. However, with the approval by the Minister of Justice, this suit was dropped on 23 November 1935. Having passed his Second State Exam, Wengler became a full-time assistant at the Kaiser Wilhelm Institute of Comparative and International Private Law from 1935 until 1944. At the same time, he also worked at the Kaiser Wilhelm Institute of Comparative Public Law and International Law.¹⁴

⁸ Decree by the Prussian State Ministry, *Preußisches Justizministerialblatt*, I 10136, 29 June 1933, 210. For more details, see V. Schmerbach, *Das 'Gemeinschaftslager Hanns Kerl' für Referendare in Jüterbog, 1933–1939* (Tübingen: Mohr Siebeck, 2008).

⁹ See also the analysis of this system of *Gemeinschaftslager* in the judgment of the International Military Tribunal Nuremberg, IMT, Bd. III, 99.

¹⁰ Certificate of 18 May 1935, 1, Bundesarchiv Sign. R 1501, Aktenbd. 16329, 26799; also available in Max Planck Institute of Comparative Public Law and International Law, archives related to the Institute's history 1927–1934, Annex 1935–1944.

¹¹ *Ibid.* ¹² *Ibid.*, 2. ¹³ *Ibid.*

¹⁴ Cf. also Rudolf, *supra* n. 3, 610. However, the Institute of Comparative Law and International Law did not belong to the Kaiser Wilhelm Society until 1938, but was rather co-financed by the Foreign Office and the Kaiser Wilhelm Society. It became part of the Kaiser Wilhelm Society when the Nazi government came to power in order to restrict governmental influence on the Institute. Cf., generally, the role of the Kaiser Wilhelm Institute of Comparative Law and International Law under national socialism, I. Hueck, 'Die deutsche Völkerrechtswissenschaft im Nationalsozialismus. Das Berliner Kaiser-Wilhelm-Institut für ausländisches öffentliches Recht und Völkerrecht, das Hamburger Institut für Auswärtige Politik und das Kieler Institut für Internationales Recht', in D. Kaufmann (ed.), *Geschichte der Kaiser-Wilhelm-Gesellschaft im Nationalsozialismus—Bestandsaufnahme und Perspektiven der Forschung*, Bd. 2 (Göttingen: Wallstein, 2000), 490, 499.

His early academic work¹⁵ was predominantly devoted to colonial law¹⁶ – his main responsibility as a scientific assistant at the Kaiser Wilhelm Institute of Comparative Public Law and International Law from the beginning.¹⁷ This led to his membership in a working group on ‘Colonial Law’¹⁸ of the Academy of German Law.¹⁹ There he devoted increasing attention to methodological issues such as the application of *ius soli* in African colonies.²⁰ In this context, his preface to a briefer monograph from 1937 on the administrative organisation of colonies in tropical Africa encapsulates his scholarly approach, as well as the increasing necessity for political caution. According to that preface, he intended to focus on comparative law and ‘to examine the issues exclusively from the legal point of view’, while expressly stating that it was inappropriate ‘to criticize the colonial law of other countries’.²¹ Nevertheless, it is worth noting that Wengler served as a legal advisor in the Colonial Department of the Nazi Party (NSDAP) until 1943.

¹⁵ A survey of Wengler’s œuvre until 1972 is found in his *Festschrift*, *supra* n. 3, vol. II, 885.

¹⁶ Cf. also Wengler’s publication list in his *Festschrift*, *supra* n. 3, No. 5 (1936), Nos. 10–12 (1937), Nos. 16–17 (1939), Nos. 24–25 (1940), No. 26 (1941), Nos. 27–28 (1942) and No. 28 (1942).

¹⁷ According to Bruns, Wengler himself had realised how he could to some extent keep away the persecutors, namely in considering the fact that the Nazi leaders had an increased interest in colonial issues, but not enough experts. Therefore Wengler planned to write ‘comparing works on colonial law without leaving the scientific terrain’, W. Wengler, ‘Erwiderung’, in P. Eisenmann and G. Zieger (eds.), *Zur Rechtslage Deutschlands – innerstaatlich und international* (Munich: Hanns-Seidl-Stiftung, 1990), 16–21, 18.

¹⁸ Cf. W. Schubert (ed.), *Akademie für Deutsches Recht, 1933–1945, Protokolle der Ausschüsse*, vol. 12: *Ausschuss für Rechtsfragen der Bevölkerungspolitik (1934–1940)*, 1–256 and *Ausschuss für Kolonialrecht mit den Entwürfen des Kolonialpolitischen Amtes (1937–1941)* (Frankfurt/Main: Lang, 2001), 411–567, 569–609.

¹⁹ Wengler’s essay, ‘Die Verwaltungsorganisation der Kolonien im tropischen Afrika’, was published in 1937 as vol. 2 in the publication series of the Academy for German Law, Department of Colonial Law. For general information on the work and function of the Academy for German Law, cf. H.-R. Pichinot, *Die Akademie für Deutsches Recht – Aufbau und Entwicklung einer öffentlich-rechtlichen Körperschaft des Dritten Reiches* (PhD thesis, Universität Kiel, 1981).

²⁰ *Koloniale Rundschau*, 1942, 205–28. However, the contribution on ‘Generalklauseln bei der Rechtsanwendung in den Kolonien’, for which Wengler had been granted 5000 Reichsmark of research funds by the Federal Research Council in April 1943, was never completed.

²¹ W. Wengler, *Die Verwaltungsorganisation der Kolonien im tropischen Afrika – Grundlinien des Kolonialverwaltungsrechts Englands, Frankreichs, Italiens und Belgiens* (Munich and Leipzig: Duncker & Humblot, 1937), 5. For a survey of Wengler’s contributions for the Colonial Committee of the Academy for German Law, see W. Schubert, *Akademie*, *supra* n. 18, 411–16.

Although Wengler's outlines for a 'constitutional law in German colonies', from June 1937,²² and for the organisation of 'European law in future German colonies'²³ were formulated in a rather neutral manner, his explanations in 1938 concerning the issue of nationality within German colonies 'to be potentially recaptured in the future' not only contained proposals regarding the acquisition or loss of the 'nationality' of these territories ('*Schutzangehörigkeit*'), but differentiated according to their race, as well as between Europeans and indigenous individuals.²⁴ Whereas the first differentiation could scarcely be avoided under the prevailing political conditions, the second differentiation between Europeans and the indigenous population tracked the legal terminology of the German Colonial Law of 1886.

Apart from colonial law, Wengler also dealt with public and private international law.²⁵ He developed various essential theories on private international law that are still indispensable today.²⁶ It might be of special interest in the present context that Wengler's article from 1944, on general principles of private international law,²⁷ was translated into French and published in the *Revue critique de droit international privé*, only a few years after the Second World War.²⁸ On the one hand, this serves as proof that his legal thinking was not imbued with the spirit of National Socialism, unlike many of his colleagues. On the other hand, it shows clearly how Wengler's attitude during the time of National Socialism was observed and evaluated abroad after 1945.²⁹

In 1937, Wengler had already been nominated for a professorship at the University of Munich, but his appointment failed for political reasons. The Minister for Science, Education and Culture, whose attention had apparently been drawn to Wengler, ordered an investigation in light of Wengler's 'most subversive statements', questioning whether he could stay in his position at the Kaiser Wilhelm Institute.³⁰ However, thanks to the intervention of the

²² *Ibid.*, 427–34. ²³ *Ibid.*, 538–49, 554–9. ²⁴ *Ibid.*, 497–501.

²⁵ Cf. in Wengler's *Festschrift*, *supra* n. 3, No. 1 (1934) as well as No. 14 (1938), 20–2, 24–5 (1940) and No. 31 (1944).

²⁶ Literal excerpt from E. Jayme, Nachruf auf Wilhelm Wengler, *Juristenzeitung* 1995, 1058, referring to the legal concepts of '*Vorfrage*' (preliminary question) and '*Substitution*'.

²⁷ *Zeitschrift für öffentliches Recht* (1944), 473–509.

²⁸ Wengler, 'Les Principes généraux du droit international privé et leurs conflits', *Revue critique de droit international privé* (1952), 595–622, and (1953), 37–60.

²⁹ For this issue and his admission to the *Institut de Droit International* in 1950, see *infra* p. 239.

³⁰ Letter to the President of the Kaiser Wilhelm Society dated 13 April 1937, Wengler's personnel file at the Freie Universität Berlin, 4.

then-director of the Kaiser Wilhelm Institute of Comparative Public Law and International Law, Viktor Bruns,³¹ a possible discharge was averted. In the same way, he was denied a lectureship in colonial law which was supposed to become effective as from the winter term 1938/39 at the Faculty of Law and Political Science of the University of Göttingen, due to doubts about Wengler's political reliability. The main motivation for the abovementioned proceedings against him was accusations that he had violated the 'Law on Malicious Attacks on State and Party'.³²

In the end, however, Wengler had to swallow a bitter pill. On 1 July 1936, he became, like many others, a member of the *NS-Rechtswahrerbund*,³³ i.e. the organisation of legal scholars affiliated with the Nazi party, arguably in order to prove, at least at a minimum, his loyalty to the regime. In 1940 he also became a member of the *NS-Volkswohlfahrt*,³⁴ as well as a member of the *Reichskolonialbund* (German Colonial League),³⁵ which was linked to his activities in the Colonial Board of the Academy of German Law.

Role in the Supreme Command of the German Armed Forces (1942–4)

From the beginning of the Second World War, the Kaiser Wilhelm Institute of Comparative Public Law and International Law, by mutual

³¹ For more details on the role of Viktor Bruns see, e.g., Anna-Maria Gräfin von Lösch, *Der nackte Geist – Die Juristische Fakultät der Berliner Universität im Umbruch von 1933*, (Tübingen: Mohr-Siebeck, 1999), 388–90.; cf. also the obituary by H. Triefel, 'Viktor Bruns †', *ZaöRV* (1942/3), 324.

³² Letter to the author, Archive of the University of Göttingen, 3 August 2007 (on file with the author).

³³ Regarding the *NS-Rechtswahrerbund*'s tasks and structures, see the detailed description by Sunnus, *Der NS-Rechtswahrerbund (1928–1945) – zur Geschichte der nationalsozialistischen Juristenorganisation*, (Frankfurt/Main: Lang, 1990). Like all other Nazi organisations, the *NS-Rechtswahrerbund* was also liquidated by the Control Council Law No. 2 regarding the termination and liquidation of Nazi organisations, dated 10 October 1945.

³⁴ See, generally, H. Vorländer, *Die NSV. Darstellung und Dokumentation einer nationalsozialistischen Organisation* (Boppard am Rhein: Harald Boldt, 1988).

³⁵ The German Colonial League (*Reichskolonialbund*) was liquidated in 1943 and its funds transmitted to the NSDAP. The 'Law for Liberation from National Socialism and Militarism' of 5 March 1946 (Annex to the 'Gesetz zur Befreiung von Nationalsozialismus und Militarismus vom 5. März 1946', Part A, H., Class I, No. 2) stated that the German Colonial League had been neither a party organisation nor a society affiliated to the NSDAP. It seems that Wengler had applied for membership of the *NS-Dozentenbund* in March 1942, but it is not clear if he was ever admitted.

agreement, advised the Supreme Command of the German Armed Forces on the laws of war. Graf Stauffenberg³⁶ and Professor Schmitz, both employed at the Institute, acted exclusively as legal advisors for the Naval War Command (*Seekriegsleitung*) and as international legal advisors for the Foreign Section/Counterintelligence Service (Section Canaris) (*OKW Amtsgruppe Ausland/Abwehr* (Office Canaris)), respectively. The aim of the agreement was to expand the Department of International Law, which had already existed within the Supreme Command's Foreign Section since the beginning of the war, to an international law team and an advisory office for international law.³⁷ After Schmitz's death in 1942, Wengler was posted to that department until his arrest by the Gestapo in January 1944.³⁸ The advisory office's work aimed first and foremost at securing compliance with the minimum standards of international law and humanitarian law by the National Socialist leadership.³⁹ The office was significantly influenced by Helmuth James Graf von Moltke, who was a member of the Kreisau Circle, part of the German resistance movement.⁴⁰ Without being a member of the Institute, he contributed several articles to the *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (*ZaöRV*),⁴¹ and had a

³⁶ For more details, see A. Meyer, *Berthold Schenk Graf von Stauffenberg (1905–1944) – Völkerrecht im Widerstand* (Berlin: Duncker & Humblot, 2001), as well as especially on his activities at the Kaiser Wilhelm Institute, 47 *et seq.*, 58 *et seq.*, 63 *et seq.* on the one hand, and at OKW, 70 *et seq.*, on the other.

³⁷ For further details, see G. van Roon, *Helmuth James Graf von Moltke – Völkerrecht im Dienste des Menschen* (Berlin: Siedler, 1986), 21, as well as the order by the Chief of OKW dated 15 September 1939, *ibid.*, 176.

³⁸ From 1938 until 1942 the following members of the Kaiser Wilhelm Institute had also been active there: Günther Jaenicke (cf. K.-H. Böckstiegel, 'Laudatio auf Günther Jaenicke anlässlich seines 85. Geburtstages am 5. Januar 1999', in V. Götz *et al.* (eds.), *Liber amicorum Günther Jaenicke – zum 85. Geburtstag*, 1998, VII ff., VIII; and, after the arrest of Wengler, Hermann Mosler.

³⁹ Some concise examples of the international law issues, which at that time could have been of interest for the circle around Moltke, to which Wengler belonged, can be found at F. v. Schlabrendorff, 'Wilhelm Wengler', *supra* n. 3, 3–5. Cf. also as to the role of the OKW, Vagts, 'International Law', *supra* n. 1, 696–8.

⁴⁰ On his personality, see, e.g., G. Brakelmann, *Helmuth James von Moltke 1907–1945: Eine Biografie* (Munich: Beck, 2007), esp. 282–97, 299, 323 concerning the cooperation between Moltke and Wengler. See also Vagts, 'International Law', *supra* n. 1, 681–2.

⁴¹ Cf. H. J. Graf von Moltke, 'Zur Rechtsstellung der Dominions im Britischen Reich', *ZaöRV* (1935), 935–42; *idem.*, 'Verfassungsrechtliche Fragen des Empire im Zusammenhang mit dem Thronwechsel, insbesondere in der Süd-Afrikanischen Union', *ZaöRV* (1937), 634–7; *idem.*, 'Verteilung der gesetzgeberischen Zuständigkeit zwischen Dominion und Provinzen in Canada', *ZaöRV* (1937), 638–43; *idem.*, 'Die Lossagung Großbritanniens, Frankreichs, Australiens, Neuseelands, Südafrikas und

thorough knowledge of the Kaiser Wilhelm Institute of Comparative Public Law and International Law. On various occasions Moltke commented upon his collaboration with Wengler as thoroughly positive.⁴² In return, Wengler heaped praise on Moltke's work at the Supreme Command of the German Armed Forces in his first article after the war in 1948.⁴³

It cannot be stated with sufficient certainty, however, whether Wengler had been aware of Moltke's resistance activities.⁴⁴ In July 1943, for example, Wengler and Moltke jointly went on an official journey to Istanbul, in order to debate the legal status of French warships that had been confiscated in the Sea of Marmara with Turkish assistance. But as a matter of fact, Moltke wanted, on the one hand, to contact Allied bodies there, and on the other hand, to attempt once more, at significant risk, to gain the support of Franz von Papen, the German Ambassador to Turkey and former Chancellor, for the resistance against Hitler.⁴⁵

Denunciation, dismissal and arrest

Shortly before Wengler was to finish his official trip and return from Istanbul to Berlin, Herbert Kier, an employee at the Institute and a convinced national socialist, denounced him.⁴⁶ The reason for the

Indiens von den Verpflichtungen der Fakultativklausel, Art. 36 des Statuts des Ständigen Internationalen Gerichtshofes', *ZaöRV* (1939/1940), 620–6; *idem.*, 'Entscheidungen nationaler Gerichte in völkerrechtlichen Fragen. Britisches Reich', *ZaöRV* (1939/1940), 881–907, as well as *idem.*, 'Die britische Order in Council vom 17. Nov. 1939 über die Beschlagnahme deutscher Ausfuhrwaren', *ZaöRV* (1940/1941), 110–26.

⁴² Cf. the letters to Günther Jaenicke, 15 January 1944 (printed in van Roon, *Helmuth James Graf von Moltke*, *supra* n. 37, 278–9, 279 as well as of 4 March 1943, *ibid.*, 289–90.

⁴³ W. Wengler, 'H. J. Graf von Moltke 1906–1945 (Vorkämpfer der Völkerverständigung und Völkerrechtsgelehrte als Opfer des Nationalsozialismus)', *Friedenswarte* (1948), 297–395. See also the appreciation in the preface to Wengler, *Völkerrecht*, vol. I (Berlin: Springer, 1964), x *et seq.* See also G. van Roon, 'Helmuth James Graf von Moltke als Völkerrechtler', *ZaöRV* (1987), 740–54.

⁴⁴ This was addressed, albeit probably negatively, in a letter related to the quarrels with the Max Planck Society on a possible indemnification, expressing that there were 'insinuations, that Herr W. [sic!] had probably also been active for a certain group with Canaris or, actually, for foreign services' ('*Andeutungen, dass Herr W. (sic!) wahrscheinlich auch für eine bestimmte Gruppe bei Canaris oder sogar für ausländische Dienststellen gearbeitet habe*'), Wengler's personnel file, Archive of the Max Planck Society.

⁴⁵ See, generally, Brakelmann, *Helmuth James von Moltke*, *supra* note 40, 282–97.

⁴⁶ On the personality of Kier, see Hueck, 'Die deutsche Völkerrechtswissenschaft', *supra* n. 14, 511. Kier had been member of the NSDAP in 1931 (!). In 1934, he came to Germany from Austria, became a member of the SS in the same year and started to work at the Institute in 1936, where his principal responsibility was *Volksgruppenrecht* (the law of

denunciation was alleged⁴⁷ comments by Wengler to a Dutch member of the German Waffen SS. That Dutch Waffen SS member, in a conversation with Kier, had accused Wengler of having told him in 1942 that he could not understand why a Dutch citizen was fighting for the Germans, as this could not favour The Netherlands. In a letter of 21 October 1943, the then-General Secretary of the Kaiser Wilhelm Society, Ernst Telschow,⁴⁸ notified this incident to the Minister for Science, Education and National Culture, and expressed major doubts as to the 'political trustworthiness of Wengler', with reference to the already mentioned 'incident' in the '*Gemeinschaftslager*' of 1937.⁴⁹ Furthermore, Kier, in his function as liaison officer for the *NS Dozentenbund* at the Kaiser Wilhelm Institute, informed the leader of the Gestapo headquarters in Berlin. Shortly after, upon his return from Istanbul, on 25 October 1943, the temporary management of the Institute interrogated Wengler (Viktor Bruns had died shortly before Wengler's return). As soon as 26 October 1943, the Ministry had informed the *Reichssicherheitshauptamt* of the matter and mentioned at the same time Wengler's collaboration with a 'certain Graf von Moltke'.

Wengler in turn reported this to the German Army's Supreme Command. To forestall a possible arrest by the Gestapo, the Army's Central Court immediately, and with Wengler's agreement, initiated an inquiry on his 'subversive statements'. Nevertheless, in January 1944, the Gestapo arrested him. During his imprisonment, the Kaiser Wilhelm

minority groups). In addition he was *Unterführer* at the Berlin Faculty of the *NS-Dozentenschaft für die Juristen*, cf. Gräfin von Lösch, *Der nackte Geist*, *supra* n. 31, 256 *et seq.* After 1945, Kier apparently applied for another post at the Kaiser Wilhelm Society/Max Planck Society, but failed. For more details regarding the activities of the Academy for German Law on the *Volksgruppenrecht*, see W. Schubert, *Akademic*, *supra* n. 18, 352–88, 438–49.

⁴⁷ Wengler himself always contradicted this statement. Moltke literally stated in a letter to Günther Jaenicke of 15 January 1944 that 'a nasty and totally absurd denunciation had been launched against Wengler by his enemies in the private law institute in cooperation between Kier and the Secretary of the Kaiser Wilhelm Society ... Countering this absurdity will be difficult because the person primarily concerned [probably the Dutch SS Officer in question] is serving at the front'; see G. van Roon, *Helmuth James Graf von Moltke*, *supra* n. 37, 278–9.

⁴⁸ As to Telschow's personality and activity as Secretary General of the Kaiser Wilhelm Society, see also the critical assessment in A. Przyrembel, 'Glum und Telschow – die Generalsekretäre der Kaiser-Wilhelm-Gesellschaft. Handlungsfelder und Handlungsoptionen der "Verwaltenden" von Wissen während des Nationalsozialismus', www.mpiwg-berlin.mpg.de/KWG/Ergebnisse/Ergebnisse20.pdf.

⁴⁹ For more details, cf. *supra* p. 224.

Society gave notice of Wengler's instant dismissal in February 1944, which had been approved by the Ministry and the directors of both Kaiser Wilhelm Institutes. At the same time, the Kaiser Wilhelm Society informed the German Army that they were no longer interested in Wengler. In March 1944 the Gestapo transferred Wengler to the German Army, where he remained in custody until May 1944, when the proceedings against him were discontinued and he was released.⁵⁰ During his imprisonment Wengler challenged his dismissal before the Berlin Labour Tribunal. The Tribunal declared the dismissal, which was without notice, to be void and converted it into a dismissal with due notice. Shortly thereafter, Wengler was called up for military service effective on 27 July 1944, where he experienced the end of the war as a member of an interpreter platoon in Munich,⁵¹ and shortly thereafter returned to Berlin, where the City Council recognised him as a victim of fascism.⁵²

Excursus: the 'Wengler case' and the discussion about Viktor Bruns' successor at the Kaiser Wilhelm Institute of Comparative Public Law and International Law

After his first heart attack in 1942, Viktor Bruns pleaded, in a letter addressed to the head of the Kaiser Wilhelm Society, that 'only Professor Bilfinger, Graf Stauffenberg or Professor Scheuner could be considered as his successor'. He stated that '[i]n [his] opinion, Professor Ritterbusch or State Councillor [Carl] Schmitt are out of the question'.⁵³ The dissidents against Hitler at the Institute, led by Moltke and including Wengler, tried to convince the Kaiser Wilhelm

⁵⁰ An extensive presentation may be found in M. Schüring, 'Minervas verstoßene Kinder – Vertriebene Wissenschaftler und die Vergangenheitsbewältigung der Max-Planck-Gesellschaft', *Geschichte der Kaiser-Wilhelm-Gesellschaft im Nationalsozialismus*, 33 (2006), 240–6.

⁵¹ Maybe this military draft also protected Wengler from further persecution in connection with the failed assassination of Hitler (20 July 1944); that, at any rate, was the appraisal of V. Schlabrendorff, 'Wilhelm Wengler', *supra* n. 3, 8.

⁵² Wengler's curriculum vitae of 24 August 1947 is to be found in his personnel file at Humboldt University, 8.

⁵³ Archive of the Max Planck Society, personnel file Bruns, cited in Hueck, 'Die deutsche Völkerrechtswissenschaft', *supra* n. 14, 523. On Bilfinger, see R. Smend, 'Carl Bilfinger †', *ZaöRV* (1959), 1–4, who reports that Bilfinger had put up with the dictatorial Nazi regime; *ibid.*, p. 3.

On the life and work of Ulrich Scheuner, see H. Ehmke, 'Geburtsstagsrede', in H. Ehmke *et al.* (eds.), *Festschrift für Ulrich Scheuner zum 70. Geburtstag* (Berlin:

Society to appoint Graf Stauffenberg as the temporary successor of Viktor Bruns, at least until the end of the war.⁵⁴ Colonel Oxé, von Moltke's supervisor, submitted this request to Telschow, General-Secretary of the Kaiser Wilhelm Society, who rejected the request.⁵⁵ Shortly thereafter, Wengler was denounced by Kier, as previously noted. At any rate, Moltke understood the denunciation as follows: '(t)hey are taking aim at Wengler, in order to deny my right to co-appoint the new director.'⁵⁶

Friedrich Saemisch, the former Prussian Finance Minister and former President of the Federal Auditing Office, was asked to prepare an expert report on a possible successor to Bruns. He confirmed Bruns' pre-screening by also favouring Bruns' cousin (!), Bilfinger, 'whose patriotism should be beyond doubt', whereas he entertained doubts on Stauffenberg's suitability, 'as one could not foresee for the time being in which sense the Institute's main focus would shift in the future'.⁵⁷ This decision, later confirmed by the Kaiser Wilhelm Society, had the long-term consequence of spoiling the chances of Wengler returning to the

Duncker & Humblot, 1973), 11–18 and U. Huber and K. Schlaich (eds.), *In Memoriam Ulrich Scheuner. Reden gehalten am 24. Oktober 1981 bei der Gedächtnisfeier der Rheinischen Friedrich-Wilhelms-Universität Bonn* (Bonn: Bouvier, 1982). As to Stauffenberg, see *supra* n. 36. On Rittersbusch, who since 1935 had been director of the Institute of International Law at Kiel, (which was renamed the 'Institut für Politik und Internationales Recht'), cf. Hueck, *supra* n. 14, 493–5, as well as F.-R. Hausmann, "Deutsche Geisteswissenschaft" im Zweiten Weltkrieg. Die "Aktion Rittersbusch" 1940–45' (1998). On Carl Schmitt, see B. Rüthers, 'Carl Schmitt im Dritten Reich' (Munich: Beck, 1990), as well as Vagts, 'International Law', *supra* n. 1, 683–4.

⁵⁴ Hueck, 'Die deutsche Völkerrechtswissenschaft', *supra* n. 14, 523.

⁵⁵ In contrast, Telschow claimed after the war that the circle around Moltke had attempted to involve Admiral Gladisch of the High Command of the Navy in the process of selecting a new director; cf. Wengler's personnel file, Archive of the Max Planck Society. On Gladisch's activities in international law during the Second World War, cf. D. Fleck (ed.), 'The Gladisch Committee on the Law of Naval Warfare. A German Effort to Develop International Law During World War II' (Bochum: Brockmeyer, 1990).

⁵⁶ Cited in Brakelmann, *Helmuth James von Moltke*, *supra* n. 40, 300. Wengler took it for granted that there was a causal link between his arrest and the forthcoming replacement of the director at the Kaiser Wilhelm Institute of Comparative Public Law and International Law; cf. Wengler's statements in his answer in Eisenmann and Zieger, *Zur Rechtslage Deutschlands*, *supra* n. 16, 19.

⁵⁷ Wengler personnel file, Archive of the Max Planck Society. A further fact was that Bilfinger, born in 1879, and thus by 1944 already sixty-five years old, was considered a mere transitional candidate, which left any possible post-war options open.

Institute, albeit the lawsuit against him had been abandoned⁵⁸ and the war had come to an end.⁵⁹

Employment at the Friedrich Wilhelm University, Berlin

Before 1945

In January 1941, during his time at both Kaiser Wilhelm Institutes, Wengler was offered a lectureship in comparative colonial law at the Friedrich Wilhelm University of Berlin,⁶⁰ a post that he filled until 1943. Thereafter, in early July 1943, the Berlin law faculty requested Wengler's suspension in connection with the lawsuit announced against him.⁶¹ When that lawsuit had been abandoned in the beginning of July 1944,⁶² the faculty requested the renewal of the lectureship, with success.⁶³ Wengler was then called up for military service; and in February 1945 the Ministry for Science, Education and Culture cancelled the lectureship in colonial law.⁶⁴

After 1945

After a short time in American captivity, Wengler had returned to Berlin by the end of July 1945, where he was first employed as a Deputy Director of the Legal Department of the German Traffic Administration in the Soviet Occupation Zone. In November 1945, Wengler contacted the German Education Administration in the Soviet Occupation Zone concerning a lectureship in International Law and Private International Law

⁵⁸ On this matter see *supra* p. 230 *et seq.*

⁵⁹ On Bilfinger's attitude regarding Wengler's possible return to the Institute after 1945 see *infra* p. 237.

⁶⁰ Letter of the Minister for Science, Education and Culture dated 10 January 1941, Wengler's personnel file, Archive of the Humboldt University Berlin. In some respect it is astonishing that Carl Schmitt who, on the recommendation of Viktor Bruns in November 1933, had become a scientific member of the Kaiser Wilhelm Institute of Comparative Public Law and International Law, and before having become a full professor at the University of Berlin due to the influence exercised by the Nazi government (for further details see Hueck, 'Die deutsche Völkerrechtswissenschaft', *supra* n. 14, 507), had expressed himself very positively on Wengler in 1941, cf. Letter by Schmitt addressed to the Dean of the Faculty of Foreign Studies at the University of Berlin dated 5 January 1941, Wengler's personnel file, Archive of the Free University Berlin.

⁶¹ For more details see *infra* p. 229 *et seq.* ⁶² *Ibid.*

⁶³ Letter of the Faculty for Foreign Studies of the Friedrich Wilhelm University of Berlin, 5 January 1941, Wengler's personnel file, Archive of the Free University Berlin.

⁶⁴ *Ibid.*

at Berlin University, which referred him to Eduard Kohlrausch, then Dean of the Law Faculty. Kohlrausch, who himself had played a problematic role at Berlin University after 1933,⁶⁵ answered, at least at first, positively in a letter dated June 1946, explaining that 'in view of his [Wengler's] broad and significant publications, a special *Habilitation* thesis was not mandatory'.⁶⁶ Yet, a note in the files of the Education Administration in the Soviet Occupation Zone, of November 1946, shows that Kohlrausch had held up Wengler's application for a *Habilitation*, and that the then-Dean Peters had approved Wengler's academic qualification, on the one hand, but, on the other hand, had deemed him to be a 'problematic person'. The note continued to State that the Faculty had considered offering the lectureship in international law to Karl von Lewinski, the former German General Consul in the United States of America and Kohlrausch's protégé, without any publications in international law, instead of to Wengler.⁶⁷ However, the remark continued that Wengler ought to be treated as a victim of Nazi persecution and thus ought to be privileged.⁶⁸

In November 1946, the new Dean of the Law Faculty, Professor Peters, pointed out that Wengler was as a matter of principle obliged to present a new and unpublished *Habilitation* thesis, a precondition hard to comply with in the light of the prevailing circumstances. At the same time, Wengler was advised to apply for a *Habilitation* at another faculty.⁶⁹ Wengler answered by way of an open letter to the *Neue Zeitung*

⁶⁵ For extensive references, see Gräfin von Lösche, *Der nackte Geist*, *supra* n. 31, 161–75, in particular 170–5, 385–6. Therefore, Kohlrausch could remain in his position after his sixty-fifth birthday due to a formal approval by the Reichskanzlei. Cf. also his 'scientific' statements: E. Kohlrausch, 'Rasseverrat im Ausland', *Zeitschrift der Akademie für Deutsches Recht*, 15 May 1938, as well as E. Kohlrausch, 'Die Strafbarkeit der Umgehung des Blutschutzgesetzes', *ibid.*, 21 June 1941.

⁶⁶ Wengler's personnel file, Archive of the Humboldt Universität Berlin, vol. II, 37.

⁶⁷ Before the war, Karl von Lewinski was General Consul in New York and had participated as the Reich's representative in the Reparation Conferences in Washington in 1922, although he ultimately had only worked on comparative law concerning US law (cf. *Das Recht der Vereinigten Staaten von Amerika*, Berlin: Heymanns, 1930). Interestingly enough, however, von Moltke had been working between 1935 and 1939 in von Lewinski's law office in Berlin which specialised in private international law, where he was, not least, occupied with the legal and financial consequences of the Jewish persecution; see Brakelmann, *Helmuth James von Moltke*, *supra* n. 40, 82, 109.

⁶⁸ Wengler's personnel file, Archive of the Humboldt Universität Berlin, vol. II, 28; Wengler had in the meantime also received an offer from Professor Hallstein from Frankfurt/Main.

⁶⁹ *Ibid.*, 32.

newspaper in Munich. In his typical frank manner, he pointed out that this policy, in view of the lack of professionals at German universities, was a 'conscious, even if not quite obvious affront against those qualified scholars', who had turned against the Nazi dictatorship after 1933. Furthermore, it could be observed that 'traditional nepotism at German faculties' had not ceased to exist. In some cases qualified scholars, once dismissed for their NS-party membership, were now asked to deliver an expert opinion on the personal and scholarly qualification of other applicants.⁷⁰

At Wengler's suggestion, and side-stepping the faculty, the Education Administration obtained external opinions on Wengler's work, among others from his former academic teacher Hans Lewald, who had been lecturing in Basel since 1935,⁷¹ as well as by Martin Wolff, who had emigrated to London. Both of them expressed themselves very positively on Wengler's aptitude. In May 1947, the Education Administration asked the Berlin Law Faculty to report on the actual State of the *Habilitation* procedure. In July, the Faculty requested an extension of time, because they were awaiting a further expert opinion by Professor Raape from Hamburg 'on Dr Wengler's personality' because there were 'a lot of objections against the personality of Wengler'.⁷² However, until the end of September 1947, this expert opinion had still not been requested. Nevertheless, for the winter term 1947–8, Wengler received, for the first time, a one-hour teaching position in private international law and a three-hour position in international law.

On 11 November 1948, the Berlin Law Faculty finally awarded Wengler the *venia legendi* in private and public international law, yet hesitated to appoint him. It was only due to a request by the Education

⁷⁰ *Ibid.*, 33. This remark can possibly be traced back to Professor Kohlrausch's regret about not having requested an expert opinion from Carl Schmitt (since then arrested); Wengler's personnel file, Archive of the Humboldt University Berlin, vol. II, 30. Moreover, it seems that Kohlrausch had also asked Bilfinger to deliver an expert opinion: he, after all, had endorsed Wengler's dismissal in 1944, *Ibid.*, 30. Peters, Kohlrausch's successor as Dean of the Law Faculty, had recommended asking, among others, Professor Jahrreiss, an expert who had delivered a celebratory speech on 30 January 1940 (the so-called 'Anniversary of National Revival', on 'Chamberlain's peace plan and the British claim to create a new world order'. After 1945, he had defended General Jodl in the Nuremberg Trials. According to Wengler, he was no longer allowed to teach at universities at that time; *ibid.*, 30.

⁷¹ On this matter, cf. also Wengler's obituary for H. Lewald, *Annuaire Institut de Droit International*, 51 II (1965), 369.

⁷² Wengler's personnel file, Archive of the Humboldt University Berlin, vol. II, 47.

Administration that the faculty appointed Wengler as a *Dozent* (associate professor). Soon thereafter, and once again only upon a renewed initiative of the Education Administration, Wengler was appointed as a professor and obtained the *venia legendi* in private and public international law. Finally, by 1 December 1948, the Faculty had requested permission to appoint him as a full professor,⁷³ a question that became moot, however, as Wengler terminated his employment as of 26 April 1949.⁷⁴ He attributed this decision, among other considerations, to the payment of his salary in *Ostmark*, a result of which being that he could not maintain his family and his mother living in West Germany. In addition, he was not allowed to lecture at the (West) Berlin University of Political Science. In his letter of resignation, however, Wengler claimed the right, 'to defend his academic conviction . . . after his change to the newly founded Freie Universität West Berlin, in the same manner as he did during his employment at Humboldt University'.⁷⁵

Wengler's 1947 syllabus for his public international law course⁷⁶ reveals the peculiarity of his international legal thinking. His approach became even more noticeable in his textbook on international law some years later. It was characterised by a high level of abstraction, which certainly did not facilitate student participation. Of particular interest with some reservations, is his idea of international law as a global power, combined with further innovative concepts – for example, on the international legal status of armed forces of international organisations or of internationally administered areas. He also reflected on the issues raised by the Nuremberg Trials and their significance for the further development of international law. Presumably, in the immediate post-war years these questions were not self-evident.

Quarrel with the Kaiser Wilhelm/Max Planck Society concerning indemnification

After the end of the Second World War, bitter quarrels arose between Wengler and the still-existing Kaiser Wilhelm Society, as well as its successor, the newly-founded Max Planck Society. Others sometimes characterised this dispute as a 'proper mud fight'.⁷⁷ The proximate cause was Wengler's demand in 1946 of indemnification from the still-existing Kaiser Wilhelm Society for his politically motivated dismissal in

⁷³ *Ibid.*, 84. ⁷⁴ *Ibid.*, 95. ⁷⁵ *Ibid.*, 96. ⁷⁶ *Ibid.*, 52 *et seq.*

⁷⁷ Schüring, 'Minervas verstoßene Kinder', *supra* n. 50, 240.

1944. This request was denied by the then President, Max Planck, arguing that in 1944 the Kaiser Wilhelm Society had been unable to act in a different way.⁷⁸ But Planck advised Wengler to apply for a position at the Institute of International Law at Dahlem, then under construction and managed by General Consul von Lewinski.⁷⁹ Wengler reacted vehemently to this proposal, as his primary aim was his moral rehabilitation.

In turn, Professor Bilfinger, who had become director of the Kaiser Wilhelm Institute of Comparative Public Law and International Law when Viktor Bruns died in 1943, rejected any collaboration with Wengler. In his view, it was totally unacceptable to employ him at the Berlin branch of the Institute.⁸⁰ A similar event occurred at the Institute of Comparative and International Private Law, located at Tübingen since its evacuation in 1944. The so-called 'Tübingen Circle' – consisting of Professors Erbe, Zweigert and Rupp and the Institute's director – had categorically objected to Wengler's appointment as a professor at Tübingen. Nonetheless, the first post-war volume of *RabelsZ* published a notice that 'the former member of the Institute [of Comparative and International Private Law], Professor Dr. Dr. Wilhelm Wengler in Berlin . . . ought to be admitted to our circle as a regular member, because during Third Reich he was politically persecuted and temporarily deterred from his academic work at the Institute'.⁸¹

The quarrels between Wengler and, at least parts of, the Kaiser Wilhelm Society hit its peak when Wengler accused the former (and still!) General Secretary of the Kaiser Wilhelm Society, Ernst Telschow, of having committed crimes against humanity pursuant to Art. 2, para. 1 lit. c Control Council Law No. 10 due to his behaviour during Wengler's dismissal and arrest.⁸² In return, Telschow questioned Wengler's reliability by referring to his activity at the Colonial Policy Office of the NSDAP. Furthermore, he spread the rumour that Wengler had threatened to denounce other employees to the Gestapo if they continued to make his private life public,⁸³ or that he had even initiated

⁷⁸ Wengler's personnel file, Archive of the Max Planck Society.

⁷⁹ On this matter, cf. *supra* n. 67.

⁸⁰ Wengler's personnel file, Archive of the Max Planck Society.

⁸¹ Preface by the editor H. Dölle, *RabelsZ* (1949/50), 3. On the other hand, Wengler's appraisal in *NJW* (1951), 555, of the restarted publication of the *ZaöRV* was much more critical about Bilfinger, who in 1943 had written an article on the tenth 'anniversary' of the rise of the Nazi government.

⁸² More details in Schüring, 'Minervas verstoßene Kinder', *supra* n. 50, 241–6.

⁸³ *Ibid.*, 244 with further references.

the transport of looted books from Paris to Berlin during the war. Finally, the proceedings were closed with the statement that Telschow's actions 'exposed the Kaiser Wilhelm Society to severe risks' and, moreover, had no influence whatsoever on the Ministry's further steps.⁸⁴

In 1964, the Max Planck Society finally refused an indemnity, arguing that no harm had been caused to Wengler because he had become a full professor after the war, whereas his former posts at both institutes had been no more than being a *Referent*. The whole discussion continued until the early 1970s⁸⁵ and seems to have been finally settled when Wengler, in 1970, talked to the then-President of the Max Planck Society, Adolf Butenandt, and presented an outline for a new, interdisciplinary-oriented Max Planck Institute of Research on Developing Countries which did not materialise.⁸⁶

Professor at the Freie Universität Berlin

Because of the growing tensions among the Allied Powers in Berlin and the increasing challenge to academic liberty at Humboldt University (until 1949 Friedrich-Wilhelm-Universität), the newly founded Freie Universität Berlin began its teaching under rather primitive conditions at the facilities of the former Kaiser Wilhelm Society in Berlin Dahlem during the Winter term of 1948–9.⁸⁷ Wengler moved to the Freie Universität during 1949, where he was appointed by May 1949 to the chair of international law and comparative law – based on a positive expert opinion from, among others, Walter Jellinek. Previously, in the winter term of 1948–9, he had already been recommended for the chair of public law by the Heidelberg Law Faculty.⁸⁸ During the summer term

⁸⁴ *Ibid.* The appeal proceedings initiated by Wengler were also unsuccessful.

⁸⁵ This is documented in a letter from Telschow to the head office dated 1972; see Wengler's personnel file, Archive of the Max Planck Society.

⁸⁶ When the Federal President, at the suggestion of the Bavarian State Government, intended to bestow the *Bundesverdienstkreuz am Bande* upon Wengler in 1978, the latter refused it with the explanation that this merit had also been bestowed on a man who had initiated his arrest in the Nazi period, his dismissal from the Kaiser Wilhelm Institutes and the prevention of an indemnification by the Max Planck Society (on this matter, see G. Zieger, 'Zum 80. Geburtstag', in Eisenmann and Zieger, *Zur Rechtslage Deutschlands*, *supra* n. 17, 11) – presumably referring to Telschow, the former General-Secretary of the Kaiser Wilhelm Society/Max Planck Society.

⁸⁷ For further references, see J. Tent, *Freie Universität Berlin 1948–1988. Eine deutsche Hochschule im Zeitgeschehen* (Berlin: Copress, 1988), 207–8.

⁸⁸ Expert opinion by Walter Jellinek on Wilhelm Wengler, 14 April 1949, Wengler's personnel file, Archive of Freie Universität Berlin.

of 1949 he started his lectures with a two-hour introduction to comparative law and a four-hour course on international law. In 1950, he was elected dean.

After his appointment to the Freie Universität, the esteem that Wengler enjoyed, especially abroad, became quickly apparent, reflecting the fact that he had never been involved with National Socialism. As early as 1950, he was elected as a member of the *Institut de Droit International*, probably also thanks to the influence of his academic teacher, Hans Lewald, then also a member of the *Institut*. Wengler was, after Rudolf von Laun und Walther Schätzel,⁸⁹ the third German citizen who became a member of the Institut after the war and, at the age of forty-three, the youngest as well. He was to become president from 1973 to 1975.⁹⁰ Moreover, he repeatedly acted as a judge and counsel in proceedings before domestic and international courts.⁹¹

Wengler's two magisterial textbooks on international private law and public international law are probably his main works, but neither is easy to read and neither received general approval.⁹² Nonetheless they contain advanced ideas that remain highly relevant more than forty and

⁸⁹ On the person and works of Schätzel, cf. especially Hans Wehberg, 'Geleitwort', in F. Brüel *et al.* (eds.), *Internationalrechtliche und Staatsrechtliche Abhandlungen – Festschrift für Walter Schätzel zu seinem 70. Geburtstag* (Düsseldorf: Hermes, 1960), vii–ix.

⁹⁰ Cf. *Annuaire Institut de Droit International*, vol. 43 II (1950), 427. Moreover, Wengler presided over the Conference in Wiesbaden in 1975; as to his activities at the *Institut de Droit International*, see also the obituary by Christian Dominicé, *Annuaire Institut de Droit International*, vol. 66 II (1996), 52 *et seq.* Cf. also W. Wengler, 'Zur Einführung', in W. Wengler (ed.), *Justitia et Pace – Festschrift zum 100 jährigen Bestehen des Institut de Droit International* (Berlin: Duncker & Humblot, 1974), 7–10.

⁹¹ He participated, for example, in 1959 as counsel in the proceedings before the ECJ, in 1965 as arbitrator in the French–Algerian Arbitral Tribunal and as the representative of the State of Bavaria in the proceedings regarding the constitutionality of the Basic Treaty of the Relations between the Federal Republic of Germany and the German Democratic Republic.

⁹² Such as the perception of the textbook on international law; see V. Schlabrendorff, 'Wilhelm Wengler', *supra* n. 3, 1, who attributed that to the fact that the work in question could only be understood 'by means of the author's personality and his experiences', despite the 'preeminent conciseness and brilliance of the terminology and rational thinking'. Cf., moreover, the review of Wengler's textbook on international private law by P. Lalive, 'Un traité magistral: le "droit international privé" de Wilhelm Wengler', *Journal de Droit International* (1983), 769–78; P.-H. Neuhaus, 'Kollisionsrechtliche Besinnung. Zu Wilhelm Wengler, Internationales Privatrecht', *RabelsZ* (1981), 627–52, as well as J. Kropholler, 'Elastische Anknüpfungsmomente für das Internationale Vertrags- und Deliktsrecht? Zugleich eine Besprechung von Wenglers Internationalem Privatrecht', *RIW* (1981), 359–63, who refers to 'the methodological presentation that is

twenty-five years after publication, respectively.⁹³ Last but not least, Wengler's personality comes through his statements in the prefaces and dedications. For example, the preface to his public international law textbook refers to people who after 1933 'searched for their own kind of humanity in miserable weakness' transformed by the political currents of their times into 'dull debris with a lawyer's mentality'.⁹⁴

Concluding remarks

The life and personality of Wilhelm Wengler was, for various reasons, atypical of his era, particularly as far as German scholarship on private and public international law is concerned. It begins with his biographical background but includes the fact that Wengler was one of the very few German experts on international law that were deeply familiar with both public and private international law. The Wengler case is probably an exception to the rule. Very early on and sometimes also avowedly, Wengler always remained true to himself, turned against the national socialist dictatorship, and had to realise later on, how some people were more flexible and more adaptive to 'new realities', making compromises and avoiding quarrels, not to mention the convinced national socialists.

Even if one came to believe that Wengler's attitude helped him after 1945, one has to realise that even after the liberation from the Nazi dictatorship, there were many people who were quicker than he (quite frequently also quicker than those who emigrated to escape persecution) in returning to their positions of employment, or even being able to remain in their functions. They – unlike Wengler – had not been afraid to

difficult to access', an 'eccentric treatment of the subject matter' and delicate ramifications, 'under which of course sometimes the essential is suffering'; finally, see F. Rigaux, 'Une importante synthèse allemande en droit international privé. Le traité du professeur Wengler', *Revue critique de droit international privé* (1982), 245–72. Regarding his textbook on international law, cf. B. Conforti, 'Il trattato di diritto internazionale del Wengler', *Rivista Diritto Internazionale* (1965), 252–64, as well as Ch. Rousseau, 'Book Review. Wilhelm Wengler: Völkerrecht', *RGDIP* (1964), 566–7, the key sentences of which are: 'le plus important ouvrage de droit international général publié en Allemagne depuis vingt ans – on pourrait même dire depuis trente ans ... L'analyse est toujours d'une extrême rigueur et la maîtrise avec laquelle l'auteur domine et oriente ses développements est impressionnante'. In contrast, H.-J. Schlochauer is more critical 'Besprechung: Wilhelm Wengler Völkerrecht', *AVR* (1966/7), 129–34.

⁹³ Cf. also his two courses at the Hague Academy of International Law, W. Wengler, 'The General Principles of Private International Law', *RdC*, 104 (1961 II), 273–469 and W. Wengler, 'Public International Law – Paradoxes of a Legal Order', *RdC*, 158 (1977 V), 9 *et seq.*

⁹⁴ W. Wengler, 'Vorwort, X–XI', in W. Wengler, *Völkerrecht*, vol. 1, *supra* n. 43.

adapt, by some means or other, to the regime. It must have been even more depressing for Wengler and others in a comparable situation to realise that it were quite often the same colleagues, who could (again) act as gatekeepers to academia for ‘someone like’ Wengler. On the other hand, after 1945, Wengler very quickly gained scholarly approval abroad – his early admission into the *Institut de Droit International* and the great number of foreign authors who contributed to the *Festschrift*⁹⁵ published on the occasion of his sixty-fifth anniversary provides the best proof.⁹⁶ In this sense this biographical outline represents more than just a life story, but rather contains an important aspect of German academic history.

⁹⁵ Cf. *supra* n. 3.

⁹⁶ However, only thirteen of the eighty authors of the *Festschrift* were German.

